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Paper No. 7

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AUG - 8 2003

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| In re Application of | : | |
| Jaworski et al | : | DECISION ON PETITION |
| Application No. 09/640,809 | : | |
| Filed: April 16, 2002 | : | |
| Attorney Docket No. 199-1721 (018) | : | |

This is a decision on the petition under 37 C.F.R. § 1.181, filed April 28, 2003, to withdraw the holding of abandonment of the above-identified application.

The petition is **DISMISSED**.

This application was held abandoned for failure to respond to the Notice of Non-Compliant Amendment within the statutory period of one month from the mailing date of April 19, 2002. The application became abandoned on May 20, 2002 by operation of law.

Petitioner states that the Notice of Non-Compliant Amendment was never received by applicant's representative and attests to the fact that a search of the file jacket and docket records indicates that the Notice of Non-Compliant Amendment was not received. The petition is accompanied by a copy of the docket record where the non-received notice would have been entered.

Pursuant to M.P.E.P. §711.03(c), it is the petitioner's burden to demonstrate that the Notice of Non-Compliant Amendment was not in fact received at the correspondence address of record at the time it was mailed. The showing required to establish the failure to receive an Office action must include a statement from the practitioner stating that the Office action was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office action was not received. A copy of the docket record where the non-received Office action would have been received had it been received and docketed must be attached to and referenced in the practitioner's statement. See "Withdrawing the Holding of

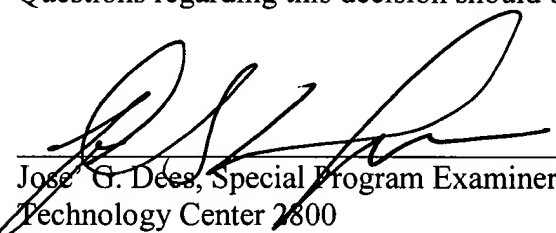
Abandonment When Office Actions Are Not Received" 1156 Official Gazette 53 (November 16, 1993) and M.P.E.P. §711.03(c),

The docket record where the non-received Notice of Non-Complaint Amendment would have been entered needs further explanation. The docket numbers are of a type/style (67,200-324), which is inconsistent with the docket number of this application (199-1721 (018)).

The requirement that a copy of the docket record where the non-received Office action would have been entered had it been received and docketed be submitted and referenced in petitioner's statement as set forth in M.P.E.P. § 711.03(c) does not appear to be complied with.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision.

Questions regarding this decision should be directed to Jose' G. Dees at (703) 308-4628.



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